

**BEFORE THE TENNESSEE STATE BOARD OF EQUALIZATION**

IN RE:	Robert G. Keast	)
	Dist. 11, Map 100, Control Map 100, Parcel 4,	) Benton County
	S.I. 000, 001 & 002	)
	Dist. 11, Map 100, Control Map 100, Parcel 6,	)
	S.I. 000 & 001	)
	Commercial and Residential Property	)
	Tax Year 2005	)

**INITIAL DECISION AND ORDER**

**Statement of the Case**

The subject property is presently valued in the aggregate at \$2,552,600 for tax year 2005. The parcel-by-parcel breakdown is summarized in exhibit A.

An appeal has been filed on behalf of the property owner with the State Board of Equalization. The undersigned administrative judge conducted a hearing in this matter on May 21, 2007 in Camden, Tennessee. In attendance at the hearing were Robert G. Keast, the appellant, Linda Armstrong, Benton County Property Assessor, and Mark Volner and Bryan Kinsey, appraisers with the Division of Property Assessments.

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

Subject property is commonly known as the Birdsong Marina located on the Tennessee River at 255 Marina Road in Camden, Tennessee. Subject property consists of a 30.5 acre resort/marina/campground which contains several mobile homes, mobile home lease sites, rental cottages, campground sites, boat slip rentals, and a boat sales facility/office/pier/museum.

The taxpayer contended that subject property should be valued at approximately fifty percent (50%) to seventy-five percent (75%) of its current appraised value. In support of this position, Mr. Keast argued that the 2005 countywide reappraisal caused the appraisal of subject property to increase excessively.<sup>1</sup> In addition, Mr. Keast maintained subject property experienced a diminution in value because the infrastructure was significantly damaged by three separate tornados between 2000 and 2005. Moreover, Mr. Keast introduced into evidence copies of his 2002-2006 statements of assets and liabilities utilized for federal income tax purposes. Mr. Keast asserted that this data shows the income approach does not support the current appraisal of subject property. Finally, Mr. Keast argued that subject docks and related structures which float or are movable should be assessed as personal property.

The assessor contended that subject property should be valued at a minimum of \$2,552,600 for tax year 2005. In support of this position, the testimony and appraisal report

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<sup>1</sup> Mr. Keast indicated subject property had previously been appraised at approximately \$1,100,000.



of Mr. Volner was introduced into evidence. Mr. Volner essentially prepared sales comparison and income approaches which he maintained support value indications of \$3,100,000 and \$3,384,000 respectively.

Mr. Volner also testified concerning the significantly higher appraisal effective January 1, 2005. According to Mr. Volner, reasons for the higher appraisal include new asphalt paving, additional mobile home and camper pads, replaced boat slips, a floating barge not previously assessed, and a revaluation of the land.<sup>2</sup>

The basis of valuation as stated in Tennessee Code Annotated Section 67-5-601(a) is that "[t]he value of all property shall be ascertained from the evidence of its sound, intrinsic and immediate value, for purposes of sale between a willing seller and a willing buyer without consideration of speculative values . . ."

General appraisal principles require that the market, cost and income approaches to value be used whenever possible. Appraisal Institute, *The Appraisal of Real Estate* at 50 and 62. (12th ed. 2001). However, certain approaches to value may be more meaningful than others with respect to a specific type of property and such is noted in the correlation of value indicators to determine the final value estimate. The value indicators must be judged in three categories: (1) the amount and reliability of the data collected in each approach; (2) the inherent strengths and weaknesses of each approach; and (3) the relevance of each approach to the subject of the appraisal. *Id.* at 597-603.

The value to be determined in the present case is market value. A generally accepted definition of market value for ad valorem tax purposes is that it is the most probable price expressed in terms of money that a property would bring if exposed for sale in the open market in an arm's length transaction between a willing seller and a willing buyer, both of whom are knowledgeable concerning all the uses to which it is adapted and for which it is capable of being used. *Id.* at 21-22.

After having reviewed all the evidence in the case, the administrative judge finds that the subject property should remain valued as shown on exhibit A for tax year 2005 absent additional evidence from the taxpayer.

Since the taxpayer is appealing from the determination of the Benton County Board of Equalization, the burden of proof is on the taxpayer. See State Board of Equalization Rule 0600-1-.11(1) and *Big Fork Mining Company v. Tennessee Water Quality Control Board*, 620 S.W.2d 515 (Tenn. App. 1981).

The administrative judge finds that the fair market value of subject property as of January 1, 2005 constitutes the relevant issue. The administrative judge finds that the Assessment Appeals Commission has repeatedly rejected arguments based upon the amount

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<sup>2</sup> It should also be noted that the 2004 appraisal was actually based upon values developed in conjunction with the previous countywide reappraisal program.



by which an appraisal has increased as a consequence of reappraisal. For example, the Commission rejected such an argument in *E.B. Kissell, Jr.* (Shelby County, Tax Years 1991 and 1992) reasoning in pertinent part as follows:

The rate of increase in the assessment of the subject property since the last reappraisal or even last year may be alarming but is not evidence that the value is wrong. It is conceivable that values may change dramatically for some properties, even over so short of time as a year. . .

Final Decision and Order at 2.

Respectfully, the taxpayer did not introduce a cost approach, sales comparison approach or income approach into evidence. The administrative judge finds that although some of the data contained in the statements of assets and liabilities would certainly be relevant to the income approach, such data standing by itself does not constitute an income approach and lacks probative value. The administrative judge finds that the procedure typically utilized in the income approach has been summarized in one authoritative text as follows:

Although there are various income capitalization techniques available to the appraiser, certain steps are essential in applying the income capitalization approach. Before applying any capitalization techniques, an appraiser must work down from potential gross income to net operating income. To do this, the appraiser will:

1. Research the income and expense data for the subject property and comparables.
2. Estimate the potential gross income of the property by adding the rental income and any other potential income.
3. Estimate the vacancy and collection loss.
4. Subtract vacancy and collection loss from total potential gross income to arrive at the effective gross income of the subject property.
5. Estimate the total operating expenses for the subject by adding fixed expenses, variable expenses, and a replacement allowance (where applicable).
6. Subtract the estimate of total operating expenses from the estimate of effective gross income to arrive at a net operating income.
7. Apply one of the direct or yield capitalization techniques to this data to generate an estimate of value via the income capitalization approach.

Appraisal Institute, *The Appraisal of Real Estate* at 493-94 (12<sup>th</sup> ed. 2001).

The administrative judge finds that the taxpayer introduced no evidence by which to quantify any loss in value attributable to the tornados. Moreover, all of the tornados struck prior to January 1, 2005 and much of the damage had been repaired by that same date.

The administrative judge finds that Mr. Keast's final contention concerned whether the docks and related structures should be reclassified as personal property. Respectfully,



the undersigned administrative judge, the Attorney General and Chancellor Brandt have all concluded otherwise. For ease of reference, the administrative judge has reproduced in exhibits B, C, and D, the administrative judge's decision in *Kenneth M. Gresham, Jr., Esq.* (Rhea Co., Tax Year 2005); Unpub. Op. Atty. Gen. to Claude Ramsey February 4, 1982; and *Chattanooga Yacht Club v. Ramsey* (Davidson Chancery, March 8, 1984) (Not for Publication).

Based upon the foregoing, the administrative judge finds that the taxpayer introduced insufficient evidence to establish a prima facie case. Moreover, the administrative judge finds that even if it is assumed arguendo that a prima facie case was established, Mr. Volner's appraisal report constitutes the best evidence in the record and supports the current appraisals of subject property for tax year 2005.

#### ORDER

It is therefore ORDERED that the values and assessments set forth in exhibit A remain in effect for tax year 2005.

It is FURTHER ORDERED that any applicable hearing costs be assessed pursuant to Tenn. Code Ann. § 67-5-1501(d) and State Board of Equalization Rule 0600-1-.17.

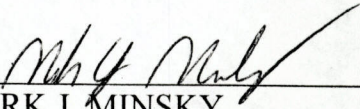
Pursuant to the Uniform Administrative Procedures Act, Tenn. Code Ann. §§ 4-5-301—325, Tenn. Code Ann. § 67-5-1501, and the Rules of Contested Case Procedure of the State Board of Equalization, the parties are advised of the following remedies:

1. A party may appeal this decision and order to the Assessment Appeals Commission pursuant to Tenn. Code Ann. § 67-5-1501 and Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization. Tennessee Code Annotated § 67-5-1501(c) provides that an appeal **“must be filed within thirty (30) days from the date the initial decision is sent.”** Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization provides that the appeal be filed with the Executive Secretary of the State Board and that the appeal **“identify the allegedly erroneous finding(s) of fact and/or conclusion(s) of law in the initial order”**; or
2. A party may petition for reconsideration of this decision and order pursuant to Tenn. Code Ann. § 4-5-317 within fifteen (15) days of the entry of the order. The petition for reconsideration must state the specific grounds upon which relief is requested. The filing of a petition for reconsideration is not a prerequisite for seeking administrative or judicial review; or
3. A party may petition for a stay of effectiveness of this decision and order pursuant to Tenn. Code Ann. § 4-5-316 within seven (7) days of the entry of the order.



This order does not become final until an official certificate is issued by the Assessment Appeals Commission. Official certificates are normally issued seventy-five (75) days after the entry of the initial decision and order if no party has appealed.

ENTERED this 26th day of June, 2007.

  
\_\_\_\_\_  
MARK J. MINSKY  
ADMINISTRATIVE JUDGE  
TENNESSEE DEPARTMENT OF STATE  
ADMINISTRATIVE PROCEDURES DIVISION

c: Mr. Robert G. Keast  
Linda Armstrong, Assessor of Property



**EXHIBIT A**

<u>TAX YEAR 2005</u>	<u>PARCEL</u>	<u>LAND VALUE (\$)</u>	<u>IMPROVEMENT VALUE (\$)</u>	<u>TOTAL VALUE (\$)</u>	<u>ASSESSMENT (\$)</u>
	11-100-100-4-000	275,000	323,700	598,700	239,480
	11-100-100-4-001	0	552,500	552,500	138,125
	11-100-100-4-002	0	415,300	415,300	166,120
	11-100-100-6-000	18,000	797,200	815,200	203,800
	11-100-100-6-001	140,000	30,900	170,900	68,360



EXHIBIT B

TENNESSEE STATE BOARD OF EQUALIZATION  
BEFORE THE ADMINISTRATIVE JUDGE

IN RE:	Kenneth M. Gresham, Jr., Esq.	)	
	Dist. 1, Map 26E, Group B, Control Map	)	Rhea County
	26L, Parcel 1700	)	
	Residential Property	)	
	Tax Year 1995	)	

INITIAL DECISION AND ORDER

Statement of the Case

The subject property is presently valued as follows:

<u>LAND VALUE</u>	<u>IMPROVEMENT VALUE</u>	<u>TOTAL VALUE</u>	<u>ASSESSMENT</u>
\$20,000	\$81,800	\$101,800	\$25,450

An appeal has been filed on behalf of the property owner with the State Board of Equalization.

This matter was reviewed by the administrative judge pursuant to Tennessee Code Annotated Sections 67-5-1412, 67-5-1501 and 67-5-1505. The administrative judge conducted a hearing in this matter on March 20, 1996.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Subject property consists of a lot adjoining Watts Bar Lake improved with a residential dwelling. Subject property is located at 214 Karen Drive in Spring City, Tennessee. Pursuant to a permit obtained from TVA, the taxpayer erected boat docks and a boathouse on nearby property owned by the United States of America. Rhea County has appraised the boat docks and boathouse at \$9,890 and assessed them to the taxpayer along with his lot and residence.

The permit granted by TVA constitutes a license which allows the taxpayer to erect and maintain boat docks, a boathouse and ramp on TVA property. The permit is not assignable and is revocable at will by TVA. The permit conveys no property rights and grants no exclusive license.

The taxpayer contended that Rhea County has no authority to assess the boat docks, boathouse, launching ramp and other water use facilities erected on TVA property. Relying on *United States v. Anderson County*, 575 F.Supp. 574 (E.D. Tenn. 1983), and *United States v. Hawkins County*, 859 F.2d 20 (6th Cir. 1988), the taxpayer maintained that a license does not create an interest in real property or estate in land. According to



the taxpayer, T.C.A. § 67-5-501(9) was not designed to tax anything other than that which is traditionally defined as an interest in real property.

Rhea County, through the Division of Property Assessments, contended that although TVA's property is exempt as governmental property pursuant to T.C.A. § 67-5-203, the property at issue is owned by the taxpayer and assessable to the owner pursuant to T.C.A. § 67-5-502(a)(1). In addition, Rhea County cited *Luttrell v. Knox County* 89 Tenn. 253, 802 S.W. 14 (Tenn. 1890), where it was held that the builder of a bridge erected on exempt property leased from Knox County was the owner of the bridge and the bridge was subject to taxation.

The administrative judge finds that the taxpayer is correct in that a license does not constitute an assessable estate in land. In this case, however, the administrative judge finds that the taxpayer *owns* the boat docks and boathouse. The administrative judge finds that the property upon which the boat docks and boathouse have been erected is owned by the United States and property exempt from property taxes pursuant to T.C.A. § 67-5-203. The administrative judge finds that the boat docks and boathouse constitute real property within the meaning of T.C.A. § 67-5-501(a) which provides that "real property" includes lands, tenements, hereditaments, structures, improvements . . . . The administrative judge finds that such real property is assessable to the owner pursuant to T.C.A. § 67-5-502(a) which mandates that all property be assessed" to the person or persons owning or claiming to own the same on January 1 for the year for which the assessment is made . . . ." The administrative judge finds that the taxpayer owns the boat docks and boathouse at issue. The administrative judge finds that the foregoing conclusions are also supported by *Luttrell v. Knox County*.

The administrative judge would note that some of the confusion in this matter arises from the fact that the boat docks and boathouse are not technically located on the same parcel as the lot and residence. It would appear that use of a "special interest" property record card might be preferable.

#### ORDER

It is therefore ORDERED that the boat docks and boathouse are assessable to the taxpayer and the following value and assessment is hereby adopted for tax year 1995:

<u>LAND VALUE</u>	<u>IMPROVEMENT VALUE</u>	<u>TOTAL VALUE</u>	<u>ASSESSMENT</u>
\$20,000	\$81,800	\$101,800	\$25,450

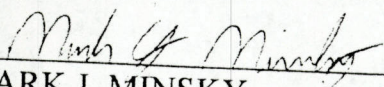
Pursuant to the Uniform Administrative Procedures Act, Tenn. Code Ann. Sections 4-5-301--324, and the practices and procedures of the State Board of Equalization, the parties are advised of the following remedies:



1. A party may appeal this decision and order to the Assessment Appeals Commission pursuant to Tenn. Code Ann. Section 67-5-1501(c) within fifteen (15) days of the entry of the order; or
2. A party may petition for a stay of effectiveness of this decision and order pursuant to Tenn. Code Ann. Section 4-5-316 within seven (7) days of the entry of the order; or
3. A party may petition for reconsideration of this decision and order pursuant to Tenn. Code Ann. Section 4-5-317 within ten (10) days of the entry of the order. The petition for reconsideration must state the specific grounds upon which relief is requested. The filing of a petition for reconsideration is not a prerequisite for seeking administrative or judicial review.

This order does not become final until an official certificate is issued by the Assessment Appeals Commission. Official certificates are normally issued sixty (60) days after the entry of the initial decision and order if no party has appealed.

ENTERED this 2nd day of April, 1996.

  
\_\_\_\_\_  
MARK J. MINSKY  
ADMINISTRATIVE JUDGE  
STATE BOARD OF EQUALIZATION

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State of Tennessee



FEB 10 1982

State Board of Equalization

OFFICE OF THE ATTORNEY GENERAL

450 JAMES ROBERTSON PARKWAY  
NASHVILLE, TENNESSEE 37219

February 4, 1982

EXHIBIT C

Honorable Claude Ramsey  
Assessor of Property  
300 Courthouse  
Chattanooga, TN 37402

Dear Mr. Ramsey:

In your letter of January 20, 1982, you requested the opinion of this office on the following topic.

QUESTION

Whether or not boat docks, boat houses, marinas and other similar structures are subject to ad valorem property tax under T.C.A. § 67-601 et seq.?

OPINION

It is the opinion of this office that boat docks, boat houses, marinas and other similar structures are subject to assessment as real property for ad valorem tax purposes under T.C.A. § 67-601 et seq.

ANALYSIS

With regard to your question, T.C.A. § 67-601 defines real property for the purposes of classification of property as follows:

"Real property is hereby defined to include lands, tenements, hereditaments, structures, improvements; moveable property assessable under § 67-612; or machinery and equipment of affixed to realty (except as otherwise provided for herein) and all rights thereto and interest therein, equitable as well as legal." (Emphasis added)

ASSISTANT ATTORNEYS GENERAL  
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RHONA J. CARTWRIGHT  
SUSAN SHORT-KELLY  
JOSET B. WRIGHT-LLOYD



Although there is no Tennessee law with regard to whether or not boat docks, boat houses, marinas and other similar structures, such as wharfs and piers, are subject to assessment as real property for ad valorem tax purposes, the general law is clear with regard to this point. American Jurisprudence 2d provides the following:

"Real estate, for purposes of taxation, includes all land within the district by which the tax is levied, and all rights and interests in such land, and all buildings and other structures affixed to the land, even though as between the landlord and the tenant they are the property of the tenant and may be removed by him at the termination of the lease. Wharves, piers and bridges are taxable as real estate."  
(Emphasis added).

71 Am.Jur. 2d, State & Local Taxation § 202 (1973). See also,  
84 C.J.S., Taxation § 71 (1954).

Based upon this general proposition coupled with T.C.A. § 67-601, it is clear that boat docks, boat houses, marinas and other similar structures which are attached to real property which is not exempted from taxation would be a structure and/or improvement on said property, and therefore fully taxable.

You indicate in your letter that such boat docks and marinas may be subject to the ad valorem property tax as a "moveable structure" under T.C.A. § 67-612; however, it is the opinion of this office such structures do not fall within the category of a "moveable structure" as defined under T.C.A. § 67-602(11) which provides the following:

"Moveable structure is hereby defined to include any mobile home or such other moveable structure which is constructed as a trailer or semi-trailer and designed to either be towed along the highways or to be parked off the highways, and which may be used, temporarily or permanently, as a residence, apartment, office, storehouse, warehouse or for any other commercial or industrial purpose; but shall not include self-propelled vehicles, sleeping and camping facilities attached to, or designed to be attached to, or drawn by a pickup truck or an automobile, and which contains less than 300 square feet of enclosed space."




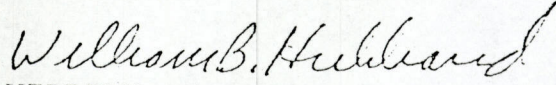
Honorable Claude Ramsey  
Page 3-

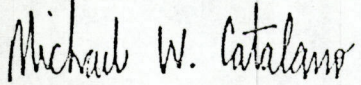
Boat docks, boat houses, marinas and other similar structures would obviously not fall within the above definition of moveable structure."

It should be noted that if the underlying real property and the boat docks, boat house, marina or other similar structure are owned by different individuals, then the underlying land would be assessed separately from the boat dock, boat house, marina or other similar structure. This conclusion is based upon the fact that T.C.A. § 67-601(1) defines real property as lands, structures and improvements. A boat dock, boat house, marina or other similar structure would be a structure and/or improvement, and thereby assessed separately. In such cases, separate ownership would have to be proven; otherwise, the underlying land and the boat dock, boat house, marina or similar structure would be assessed as one.

Sincerely,

  
WILLIAM M. LEECH, JR.  
Attorney General

  
WILLIAM B. HUBBARD  
Chief Deputy Attorney General

  
MICHAEL W. CATALANO  
Asst. Attorney General

cc: Jerry Shelton  
Executive Secretary  
State Board of Equalization



CHATTANOOGA YACHT CLUB, ET AL. )

VS. No. 83-1575-III )

CLAUDE RAMSEY, HAMILTON COUNTY  
ASSESSOR OF PROPERTY, ET AL. )

FILED  
1984 SEP 8 PM 3 35  
IN THE CHANCERY COURT  
FOR THE STATE OF TENNESSEE  
7TH DIVISION  
DAVIDSON COUNTY  
PART THREE

RECEIVED  
STATE BOARD OF  
EQUALIZATION

MEMORANDUM

Chattanooga Yacht Club and two boathouse owners appeal a decision of the Assessment Appeals Commission of the State Board of Equalization, which classified docks and boathouses on Chickamauga Lake as real property. Review by this Court is pursuant to the Uniform Administrative Procedures Act, T.C.A. § 4-5-322. Finding no error, the Court affirms the Commission's decision.

The underlying facts are accurately stated in the Commission's findings of fact and conclusions of law:

There are three kinds of docks located at the Chattanooga Yacht Club. The "Rooster Dock" is used for mooring house boats and other larger boats. Also contained therein is the "Hen House" which is attended 24 hours a day. This is a larger dock which is used for parties and other activities and has access from the main club area. There are also two piers which are used for mooring house boats and other kinds of boats. These piers are smaller than the Rooster Dock and do not have the same amenities. The Rooster Dock is connected to the Rooster Porch at the main club area while the two piers are connected to shore by ramps. The boat houses in general are parallel to the shore line and are connected by several ramps with each boat house having an individual dock at the back with the individual docks being



connected to form a dock the length of the house boat line. The individual docks are referred to as finger docks.

The docks and boat houses are all attached to "spud poles". A spud pole is a long slender column of timber or steel driven into the ground or lake bottom. These are driven approximately 3 to 6 feet into the bottom of the lake with ramps anchored to shore. All docks are anchored to shore and have easy access by way of the ramps. The number of spud poles and their location is dictated by the size of the dock or boat house they are intended to hold in place. A finger dock runs along the back of each boat house and is the property of the boat house owner; these docks are attached to each other in order to give access to all the boat houses in the line.

The boat houses are held in place by chains to the spud poles. Approximately 90% of the boat houses have electrical connections and 220-volt electricity on individual meters is available to all boat houses. Some boat houses have only basic electric connections while others are fully equipped including heating and air conditioning. Water is available to boat houses through use of special rubber connectors to take care of the flexing of the boat house. There are 50 telephone lines available which can be moved from slip to slip.

Mr. Rex Hediman, manager of the Chattanooga Yacht Club for more than 24 years, testified about how the docks and boat houses are affixed and what is necessary for the movement of a dock or boat house. When a boat house is to be moved, the electrical connection is cut with bolt cutters and if applicable the telephone and water are disconnected. The chain holding the boat house or dock to the spud poles are cut with bolt cutters. After the boat house or dock is disconnected, a work boat is attached and the boat house or dock is moved. Testimony revealed that the average boat house could be readied for removal in 30 to 45 minutes. A dock could be moved in the same manner, yet, depending on the size, it might be necessary to divide the dock into sections. The spud poles can be removed if no longer needed.



The issues presented for review are whether the decision of the Assessment Appeals Commission to classify plaintiffs' docks and boathouses as real property is in violation of T.C.A. § 67-5-501(9)\* and is supported by substantial and material evidence.

T.C.A. §67-5-501(9) provides as follows:

"Real property" is hereby defined to include lands, tenements, hereditaments, structures, improvements; moveable property assessable under § 67-5-802; or machinery and equipment affixed to realty (except as otherwise provided for herein) and all rights thereto and interests therein, equitable as well as legal;

The docks and boathouses clearly are not moveable property assessable under §67-5-802. (See definition of "moveable structure", § 67-5-501(6)). In determining whether the docks and boathouses fall within the scope of § 67-5-501(9), the Court must apply the following two-pronged test:

- 1) Whether their removal would cause serious injury to the realty;
- or, 2) Whether from the intention of the owners as determined from all the circumstances and the uses to which they are being put, the docks and boat houses may be presumed to be permanently annexed to the realty.

See, Hickman v. Booth, 131 Tenn. 32, 173 S.W. 438 (1914); Cf. In Re Real Estate in Sandy Creek Township, 199 Pa. Super 310, 184

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\*/ This statute has been renumbered. It is referred to throughout the administrative record as T.C.A. § 67-601(1).



A2d 127 (1962) (this test applied to mobile homes in case involving property tax).

### I. Docks

#### A. Rooster Docks

There is no evidence in the record how the rooster dock is connected to the shoreline. Based upon the fact that the rooster dock and the connected rooster porch have not been moved since at least 1958, the Court concludes that the dock is intended to be permanently affixed to the realty.

#### B. Pier 67 & Pier 68

These large free-floating docks are attached to the shoreline by ramps and are used to moor boats, houseboats and boat-houses. There is no evidence in the record that these large piers have ever been moved in the history of the club. The Court concludes that they are intended to be permanently affixed to the realty.

#### C. Finger Docks

These small free-floating docks are owned by individual club members and may be bought and sold. They are attached to the Rooster Dock by members to moor their houseboats or are attached to Piers 67 or 68 to moor boathouses. Although they can be removed in forty-five minutes, only four or five of the finger docks have ever been moved. The Court concludes that the finger docks are intended to be permanently affixed to the realty.



## II. BOATHOUSES

The boathouses, like the finger docks, are owned by individual club members. Approximately sixty are attached directly to the shoreline by approximately ten ramps. There boathouses are attached to each other by quarter-inch chains, on all four corners. An additional twenty-five boathouses are attached to Piers 67 & 68. Ninety percent of the boathouses are also connected to "spud poles", which are large wooden or steel poles inserted three to six feet into the lake bottom. Two average size boathouses share each spud pole, although some large boathouses have a spud pole on each corner. Ninety percent of the boathouses have electricity and some have water lines. Approximately fifty of the boathouses have telephone lines. An average-sized boathouse can be detached in approximately forty-five minutes by an experienced crew of several workers. Larger boathouses take much longer.

Although there was no proof of the average length of time a boathouse remains attached to the shore or pier, only sixty percent have been moved in the last twenty-five years. Four boathouse owners testified that they did not intend to keep their boathouses at the club permanently; those asked, however, testified that their boathouses had been at the club from one to four years.

The boathouse issue is a more difficult question than is the docks. In view of the time period the boathouses are commonly attached to the realty and the fact that ninety



percent of the boathouses have electrical lines and/or water lines and that a majority have telephone lines, the Court cannot conclude the Commission incorrectly presumed an intent to permanently affix the boathouses to the realty.

The plaintiffs have directed the Court to the case of Welchel Co. v. King, 610 S.W.2d 710 (Tenn. 1981). In the Welchel case, the Supreme Court applied the two-pronged test set forth in Hickman v. Booth, 131 Tenn. 32, 173 S.W. 438 (1914), and concluded that grain bins were personal property rather than real property. In the present case, it is true that the boat-houses are, like the grain bins, capable of being moved in a short time without causing damage to the realty. The Court is not persuaded, however that the reasoning in the Welchel case supports a different result in this case. In addition, unlike the grain bins, the boathouses are connected to electrical, water and telephone lines. T.C.A. § 67-5-802, while applying only to mobile homes, sets forth this criteria for affixation to real property, "being on a foundation, or being underpinned, or connected with any one utility service such as electricity, natural gas, water or telephone...." Although that section applies to mobile homes, it is instructive as to the Legislature's intent regarding similar property.

An additional issue raised by the plaintiffs is whether the terms structure and improvement as used in T.C.A. § 67-5-501(9) are vague and overbroad in that they include objects which need



not be real property. The Court concludes that this argument is without merit in the present case since the criteria used by the Assessment Appeals Commission was not simply whether the docks and boathouses were structures or improvements but whether the docks and boathouses were intended to be permanently affixed to the realty.

CONCLUSION

The decision of the Board of Equalization is not in violation of T.C.A. § 67-5-501(9) and is supported by substantial and material evidence in the record. The decision is affirmed.

  
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ROBERT S. BRANDT  
CHANCELLOR

March 8, 1984

cc: Michael Catalano  
Craig Allen



IN THE CHANCERY COURT FOR THE STATE OF TENNESSEE  
7TH DIVISION, DAVIDSON COUNTY, PART THREE

CHATTANOOGA YACHT CLUB, ET AL. )

VS. )

CLAUDE RAMSEY, HAMILTON COUNTY )  
ASSESSOR OF PROPERTY, ET AL. )

No. 83-1575-III

JUDGMENT

ORDER FILED & ENTERED 3-8-84

MINUTE BOOK copy PAGE       

For the reasons stated in the Court's memorandum,  
the decision of the Assessment Appeals Commission is affirmed.  
Costs are taxed to the plaintiffs.

Robert S. Brandt  
ROBERT S. BRANDT  
CHANCELLOR

March 8, 1984

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STATE BOARD OF  
EQUALIZATION

MEMORANDUM

Chattanooga Yacht Club and two boathouse owners appeal a decision of the Assessment Appeals Commission of the State Board of Equalization, which classified docks and boathouses on Chickamauga Lake as real property. Review by this Court is pursuant to the Uniform Administrative Procedures Act, T.C.A. § 4-5-322. Finding no error, the Court affirms the Commission's decision.

The underlying facts are accurately stated in the Commission's findings of fact and conclusions of law:

There are three kinds of docks located at the Chattanooga Yacht Club. The "Rooster Dock" is used for mooring house boats and other larger boats. Also contained therein is the "Hen House" which is attended 24 hours a day. This is a larger dock which is used for parties and other activities and has access from the main club area. There are also two piers which are used for mooring house boats and other kinds of boats. These piers are smaller than the Rooster Dock and do not have the same amenities. The Rooster Dock is connected to the Rooster Porch at the main club area while the two piers are connected to shore by ramps. The boat houses in general are parallel to the shore line and are connected by several ramps with each boat house having an individual dock at the back with the individual docks being



connected to form a dock the length of the house boat line. The individual docks are referred to as finger docks.

The docks and boat houses are all attached to "spud poles". A spud pole is a long slender column of timber or steel driven into the ground or lake bottom. These are driven approximately 3 to 6 feet into the bottom of the lake with ramps anchored to shore. All docks are anchored to shore and have easy access by way of the ramps. The number of spud poles and their location is dictated by the size of the dock or boat house they are intended to hold in place. A finger dock runs along the back of each boat house and is the property of the boat house owner; these docks are attached to each other in order to give access to all the boat houses in the line.

The boat houses are held in place by chains to the spud poles. Approximately 90% of the boat houses have electrical connections and 220-volt electricity on individual meters is available to all boat houses. Some boat houses have only basic electric connections while others are fully equipped including heating and air conditioning. Water is available to boat houses through use of special rubber connectors to take care of the flexing of the boat house. There are 50 telephone lines available which can be moved from slip to slip.

Mr. Rex Hediman, manager of the Chattanooga Yacht Club for more than 24 years, testified about how the docks and boat houses are affixed and what is necessary for the movement of a dock or boat house. When a boat house is to be moved, the electrical connection is cut with bolt cutters and if applicable the telephone and water are disconnected. The chain holding the boat house or dock to the spud poles are cut with bolt cutters. After the boat house or dock is disconnected, a work boat is attached and the boat house or dock is moved. Testimony revealed that the average boat house could be readied for removal in 30 to 45 minutes. A dock could be moved in the same manner, yet, depending on the size, it might be necessary to divide the dock into sections. The spud poles can be removed if no longer needed.



The issues presented for review are whether the decision of the Assessment Appeals Commission to classify plaintiffs' docks and boathouses as real property is in violation of T.C.A. § 67-5-501(9)<sup>\*</sup> and is supported by substantial and material evidence.

T.C.A. §67-5-501(9) provides as follows:

"Real property" is hereby defined to include lands, tenements, hereditaments, structures, improvements; moveable property assessable under § 67-5-802; or machinery and equipment affixed to realty (except as otherwise provided for herein) and all rights thereto and interests therein, equitable as well as legal;

The docks and boathouses clearly are not moveable property assessable under §67-5-802. (See definition of "moveable structure", § 67-5-501(6)). In determining whether the docks and boathouses fall within the scope of § 67-5-501(9), the Court must apply the following two-pronged test:

- 1) Whether their removal would cause serious injury to the realty;
- or, 2) Whether from the intention of the owners as determined from all the circumstances and the uses to which they are being put, the docks and boat houses may be presumed to be permanently annexed to the realty.

See, Hickman v. Booth, 131 Tenn. 32, 173 S.W. 438 (1914); Cf. In Re Real Estate in Sandy Creek Township, 199 Pa. Super 310, 184

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<sup>\*/</sup> This statute has been renumbered. It is referred to throughout the administrative record as T.C.A. § 67-601(1).



A2d 127 (1962) (this test applied to mobile homes in case involving property tax).

### I. Docks

#### A. Rooster Docks

There is no evidence in the record how the rooster dock is connected to the shoreline. Based upon the fact that the rooster dock and the connected rooster porch have not been moved since at least 1958, the Court concludes that the dock is intended to be permanently affixed to the realty.

#### B. Pier 67 & Pier 68

These large free-floating docks are attached to the shoreline by ramps and are used to moor boats, houseboats and boat-houses. There is no evidence in the record that these large piers have ever been moved in the history of the club. The Court concludes that they are intended to be permanently affixed to the realty.

#### C. Finger Docks

These small free-floating docks are owned by individual club members and may be bought and sold. They are attached to the Rooster Dock by members to moor their houseboats or are attached to Piers 67 or 68 to moor boathouses. Although they can be removed in forty-five minutes, only four or five of the finger docks have ever been moved. The Court concludes that the finger docks are intended to be permanently affixed to the realty.



## II. BOATHOUSES

The boathouses, like the finger docks, are owned by individual club members. Approximately sixty are attached directly to the shoreline by approximately ten ramps. There boathouses are attached to each other by quarter-inch chains, on all four corners. An additional twenty-five boathouses are attached to Piers 67 & 68. Ninety percent of the boathouses are also connected to "spud poles", which are large wooden or steel poles inserted three to six feet into the lake bottom. Two average size boathouses share each spud pole, although some large boathouses have a spud pole on each corner. Ninety percent of the boathouses have electricity and some have water lines. Approximately fifty of the boathouses have telephone lines. An average-sized boathouse can be detached in approximately forty-five minutes by an experienced crew of several workers. Larger boathouses take much longer.

Although there was no proof of the average length of time a boathouse remains attached to the shore or pier, only sixty percent have been moved in the last twenty-five years. Four boathouse owners testified that they did not intend to keep their boathouses at the club permanently; those asked, however, testified that their boathouses had been at the club from one to four years.

The boathouse issue is a more difficult question than is the docks. In view of the time period the boathouses are commonly attached to the realty and the fact that ninety



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CONCLUSION

The decision of the Board of Equalization is not in violation of T.C.A. § 67-5-501(9) and is supported by substantial and material evidence in the record. The decision is affirmed.

  
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